

CEQA Improvement for Housing: Discussion Concepts

There has been much discussion about the importance of encouraging more efficient land use for new housing and housing-related traffic infrastructure, while minimizing the impact of housing projects on sensitive habitat and productive farmland. The following concepts are proposed as means for improving CEQA so the state may more effectively meet its goals for conservation of agricultural and resource lands as well as its housing development needs.

1. Front Load CEQA Process at the Plan Level and Streamline CEQA at the Project Level

CEQA analysis of cumulative impacts, growth-inducing impacts, and alternatives of the housing component of a local government's general plan or other program level document are best assessed at a general or regional level, rather than on a housing project-by-project basis.

Where such review had been appropriately completed at the plan or program level (as discussed below), further CEQA review of such issues would not be required for housing projects or the transportation infrastructure necessary to support such housing projects that are consistent with the general plan or other program level document.

Components of a Front-Loaded General Plan. A qualifying general plan or program-level document would be sufficiently up-to-date and sufficiently detailed to allow a meaningful analysis of cumulative impacts, growth-inducing impacts, and alternatives in an Environmental Impact Report (EIR). For example, the plan or program would need to identify sufficiently detailed intensities and locations for future development so that the associated EIR can accurately and thoughtfully assess the potential environmental impacts of full build-out of the plan. The EIR for such a general plan or program-level document would identify and establish mitigation for the significant impacts of any housing projects that are consistent with the land use and housing elements of the general plan, including an adequate mitigation monitoring plan to ensure that the mitigation is accomplished at the site-specific project level. The public would be encouraged to participate fully in this process.

In addition to cumulative impacts, growth-inducing impacts, and alternatives, the general plan or program-level document could address other issues best addressed at a regional level. For example, if a local government elects to develop a watershed management plan that identifies standardized mitigation measures that would be applied at a project level (and which effectively mitigate the pollution from surface water runoff of a site-specific housing project and its related traffic infrastructure to below the level of significance), then the later CEQA document for that housing project would not need to reassess project level surface water runoff impacts.

Limit Legal Challenges. Legal challenges to housing projects included within the type of general plan or program-level document described above would be limited. A person could not challenge a housing project consistent with such a general plan or program-level document on the grounds that it failed to analyze cumulative impacts, growth-inducing impacts, or alternatives appropriately. A person would be limited to challenging the project on the ground that it was inconsistent with the general plan or program-level document.

With respect to other bases for challenging CEQA compliance of a housing project included in the type of general plan or program-level document described above, the plaintiff would have the burden of proving that there was substantial evidence that the proposed housing project could have a significant environmental impact. Courts would be directed to use a substantial evidence standard in ruling on such challenges. The plaintiff would also have the burden of proving that a Mitigated Negative Declaration was not the appropriate level of review for such a housing project.

2. Statutory Changes Supporting Housing Projects

Because not all local governments will develop the type of general plan described above, or may not do so immediately, other methods for limiting the use of CEQA to challenge or delay housing projects while still avoiding any reduction of environmental protection will be important. The following concepts would help achieve these goals.

Develop Statutory Exemptions.

- Develop one or more meaningful housing-related statutory exemptions from CEQA by reducing and simplifying the qualifying criteria. These exemptions should encourage housing projects within already developed areas that have been identified in a general plan and zoned for such purposes, including development in the proximity of employment centers. Such exemptions are beneficial to the environment by lessening development pressure on agricultural and resource land.
- Develop standardized mitigation measures for specified construction-related impacts (such as dust, PM10, noise, and construction traffic) and provide that such measures will be deemed to reduce impacts to below the level of significance.
- Exempt the need for Appendix F energy analysis for housing projects installing some amount of solar panels, or meeting some LEEDs (Leadership in Energy and Environmental Design) standard.
- Establish that a local government's obligation to meet its housing need identified through the Regional Housing Needs Assessment or a successor process does not, in itself, constitute a growth-inducing impact.

Streamline Litigation.

- Clarify record preparation requirements where petitioners elect to prepare record.
- Encourage courts to fashion narrow remedies where plaintiffs bring successful CEQA challenges. For example, existing law allows a court to suspend a portion of a project that is not in compliance with CEQA while allowing CEQA-compliant portions of a project to go forward. Before taking this approach, a court must make a series of specified findings. These findings should be clarified and tightened to encourage courts to issue such narrowly focused orders in an appropriate case.
- Create a neutral CEQA administrative law judge (ALJ) or panel at the state level as an option to resolve CEQA disputes. On appeal, a court would be bound to uphold the ALJ's decision if it were supported by substantial evidence.

Clarify Alternatives Analysis of Housing Projects.

- Where a specific housing project is consistent with the general plan and Regional Housing Needs Assessment, the lead agency would not have to consider the “no project” alternative.
- Where a private housing project is consistent with the general plan and zoning and the Regional Housing Needs Assessment, a lead agency would not have to analyze alternative sites in the EIR. (This concept is suggested in *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553.)
- Moreover, when an area is zoned for a range of densities, and a proposed housing project is consistent with that range, the lead agency would have to balance the alternative of developing a lower density housing project in that area against the state’s policy goals of developing an adequate supply of housing.

Confirm Agencies’ Use of Statement of Overriding Consideration for Housing.

- The state has determined that an adequate supply of housing is a critical issue of statewide importance. Therefore, a public agency may approve or carry out a housing project for which an EIR identifies significant effects that cannot be mitigated below a level of significance where the benefits of supporting the state’s housing goals outweigh the significant effects on the environment.
- If such a statement of overriding consideration is included in a plan-level EIR, subsequent housing projects that are consistent may rely on such statements as a basis for mitigated negative declarations.

Make CEQA Data More Accessible

Section 21003(d) of the Public Resources Code sets forth the Legislature’s declaration that it is the policy of the state that: “Information developed in individual environmental impact reports be incorporated into a data base which can be used to reduce delay and duplication in preparation of subsequent environmental impact reports.” OPR is currently reviewing proposals to meet this goal. A source of funding should be identified to support efforts to implement this state policy.

3. Proactive Resource Planning

The Administration also intends to add a new chapter to the Public Resources Code. It contemplates project proponents and local governments voluntarily working together to produce a plan that includes smart growth development projects along with corresponding conservation projects.

The Proactive Resources Planning Act will include the following concepts:

- **Planning Agreement.** The local agency and project proponents will first enter into a planning agreement. The planning agreement will:
 - Provide preliminary concepts regarding the nature and scope of the plan, including geographic area covered by the plan and the types of development and corresponding conservation projects that are being contemplated.
 - Explain what steps (if any) need to be taken to ensure consistency with the existing general plan or specific plan.

- Explain how the planning process will be funded. The project proponents will likely be responsible for securing the funds needed to engage in the planning process.
- Develop a process for ensuring public involvement in the planning process. This public process should be tailored to the needs of the specific community, but must meet certain minimum standards.
- **Planning Process.** Once the project proponent and local agency (with input from the public) have signed the planning agreement, the parties will commence the actual planning process.
 - The process will include significant public outreach and response to public concerns to ensure that the final plan is acceptable to the community.
 - The plan must meet specified objectives, although the planners will have flexibility in determining how to meet those objectives. The plan will include all of the following:
 - Development projects that are consistent with smart growth goals for efficient development patterns, infill development, intelligent design, and meeting 20-year projections of housing needs.
 - Conservation projects that will: (i) mitigate significant effects of the development projects; and (ii) include conservation elements beyond what is necessary for mitigation to comply with the current requirements of CEQA. The “beyond mitigation” conservation projects must meet or exceed a standard set forth in the Act designed to affirmatively promote the protection, preservation, restoration and enhancement of habitat, open space and agricultural resources.
 - A process for ensuring that development and conservation goals will be met, including:
 - Funding measures. For example, the plan could require the establishment of a mitigation fund that would be funded by persons engaged in development projects.
 - Monitoring and reporting measures to ensure the implementation of both development and conservation requirements.
 - The requirement that a person who wants to undertake a development project must enter into an implementation agreement with the local agency.
- **CEQA Compliance.** The planning process will satisfy CEQA for both the elements of the plan and for any necessary amendments to a general plan or specific plan which are in furtherance of the plan.
 - The plan will be a CEQA document, and will include:
 - A detailed environmental analysis of the plan

- Mitigation measures or alternatives that would substantially reduce any significant adverse effects on the environment to the extent feasible.
- The plan will be subject to at least the same notice and comment from the public and from applicable federal, state and local agencies as an EIR.
- There will be a 30-day statute of limitations for a legal action on the ground that the plan did not adequately meet the requirements of CEQA.
- **Subsequent Projects.** Upon approval of the plan by the local agency, parties will be able to undertake projects that are substantially consistent with the plan with no further CEQA review. Each development project will include a corresponding conservation project (which may include paying into a conservation fund).
 - The lead agency for the subsequent consistent project must be the local agency in the plan.
 - The party wanting to undertake a subsequent consistent project will have to enter into the implementing agreement with the local agency. The local agency will have the obligation to enforce the agreement, and will be subject to a mandamus action if it fails to do so.
 - The local agency will have to approve of the subsequent consistent project as being substantially consistent with the plan. Applicable notice will be provided to the public.
 - Upon approval of the project by the local agency, the project cannot be challenged except on the ground that it is not substantially consistent with the plan. There would be a 30 day statute of limitations period for attacking the project on those grounds.